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Applicants: M.H. Wyzgala et al.

Attorney Docket No.: BSCO114052

Application No.: 09/629,771

Group Art Unit: 3762

Filed: July 31, 2000

Title: EXPANDABLE ABLATION BURR

PETITION UNDER 37 C.F.R. § 1.47(a) FOR FILING WHEN AN INVENTOR REFUSES TO
EXECUTE THE APPLICATION PAPERS

Seattle, Washington 98101

March 23, 2001

TO THE COMMISSIONER FOR PATENTS:

We, Mark H. Wyzgala, Thomas J. Hiblar, Lixiao Wang, John Chen, Irina Nazarova, Nancy Haig, Sheng-Ping Zhong, and Daniel M. Lafontaine (hereinafter "the Applicants"), as Applicants of the above-referenced patent application, hereby petition the Commissioner under 37 C.F.R. § 1.47(a) to accept the Declarations without signature of joint applicant, Eric B. Hamilton.

REMARKS

As set forth in M.P.E.P. § 409.03(a), an application with the Declaration having less than all joint inventor's signatures may be accepted if the following requirements are met:

(A) all the available joint inventors (1) make oath or declaration on their own behalf as required by 37 C.F.R. § 1.63 or 1.175 and (2) make oath or declaration on behalf of the non-signing joint inventor as required by 37 C.F.R. § 1.64;

(B) the application must be accompanied by proof that the non-signing inventor (1) cannot be found or reached after diligent effort or (2) refuses to execute the application papers; and

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(C) the last known address of the non-signing joint inventor is stated.

The Applicants submit that all of the available joint inventors have made the oath or declaration on their own behalf as required by 37 C.F.R. § 1.63 or 1.175 and make oath or declaration on behalf of the non-signing joint inventor as required by 37 C.F.R. § 1.64. Attached herewith is a Combined Declaration & Power of Attorney executed by the Applicants. The signature block of the non-signing inventor, Eric B. Hamilton, is unexecuted. By submission of the Combined Declaration and Power of Attorney and this Petition, the Applicants hereby make a declaration on behalf of Eric B. Hamilton.

Secondly, the Applicants submit that the non-signing inventor refuses to execute the application papers. Attached herewith is a Declaration by Susan L. Creek, an employee of SCIMED Life Systems, Inc. which sets forth the facts of Eric B. Hamilton's refusal to execute the application papers. On November 20, 2000, Eric B. Hamilton was mailed a copy of the Combined Declaration & Power of Attorney with instructions for its execution and return. Paragraph 2 of the Declaration of Susan L. Creek. After failing to return an executed Combined Declaration & Power of Attorney, Mr. Hamilton was mailed several reminder letters at 12100 129th Lane NE, #N205, Kirkland, Washington, 98034. Paragraph 4 of the Declaration of Susan L. Creek. Mr. Hamilton acknowledged receipt of the reminder letter at his new address, 818 17th Street, Washougal, Washington, 98671, by a telephone conversation with Ms. Creek on January 11, 2001. Paragraph 6 of the Declaration of Susan L. Creek. After conversing with Mr. Hamilton, another copy of the Combined Declaration & Power of Attorney with instructions for its execution and return was sent to Mr. Hamilton at his new address of 818 17th Street, Washougal, Washington, 98671, on January 11, 2001. Paragraph 7 of the Declaration of Susan L. Creek.

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Again, after failing to receive an executed Combined Declaration & Power of Attorney from Mr. Hamilton, another copy of the January 11, 2001 letter was sent to the same address as a reminder to Mr. Hamilton on March 5, 2001 and receipt of the letter was acknowledged by Mr. Hamilton's wife. Paragraphs 9 and 10 of the Declaration of Susan L. Creek. A third copy of the Combined Declaration & Power of Attorney with instructions for its execution and return was sent to Mr. Hamilton on March 20, 2001. Paragraph 11 of the Declaration of Susan L. Creek. As of the present, Mr. Hamilton has not executed and returned the Combined Declaration & Power of Attorney. Paragraph 14 of the Declaration of Susan L. Creek.

The Applicants have made repeated attempts to obtain an executed Combined Declaration & Power of Attorney from Mr. Hamilton. Because he has acknowledged receipt of the Combined Declaration and Power of Attorney and because he has not returned any executed copies to us, the Applicants can only conclude that Mr. Hamilton is refusing to sign the Combined Declaration and Power of Attorney.

After giving Mr. Hamilton ample opportunity to respond, the Applicants have been prejudiced in failing to respond to the Notice to File Missing Parts mailed on September 25, 2000. The Applicants must be allowed to continue without Mr. Hamilton's Declaration to avoid further prejudice to the Applicants. Thus, the Applicants request the Petition under 37 C.F.R. § 1.47(a) be granted and that the above-referenced patent application be deemed complete for examination under 35 U.S.C. 111(a).

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If the office has any further questions regarding this petition, it is invited to call the Applicants' attorney at the number listed below.

Respectfully submitted,

CHRISTENSEN O'CONNOR
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Direct Dial No. 206.695.1708

I hereby certify that this correspondence is being deposited with the U.S. Postal Service in a sealed envelope as first class mail with postage thereon fully prepaid and addressed to the Commissioner for Patents, Washington, D.C. 20231, on the below date.

Date: March 23, 2001



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